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No. 11841

United States  
Circuit Court of Appeals

for the Ninth Circuit

Serial 2514

ED DE BON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

SUPPLEMENTAL

Transcript of Record

Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED

AUG 20 1948

PAUL P. O'BRIEN



No. 11841

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the United States  
District Court for the Northern District  
of California

Before Hon. George B. Harris, Judge.

No. 30,881-H

UNITED STATES OF AMERICA,

vs.

ED De BON,

Defendant.

REPORTER'S TRANSCRIPT OF RECORD

July 31, 1947

Mr. Bonsall: Ladies and gentlemen of the jury, as the court said, you have listened to the evidence in this case; you have listened patiently. The grand jury of this district returns an indictment against three defendants, John Stephen Hildebrand, Oscar Csaki, and Ed De Bon. The only defendant before you for your consideration, of course, is Ed De Bon. After the Grand Jury returns an indictment, it is the duty of the United States Attorney's office to proceed with the prosecution of the charge against the defendant. Our office has endeavored to do that. After we have presented the case to you and the defendant has had his day in court, represented by counsel, and you have heard the Government witnesses, then it becomes your exclusive prerogative to pass upon the facts [1\*] of the case, to de-

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\* Page numbering appearing at foot of page of original certified Reporter's Transcript.

termine if, from all the facts, the Government has made out a case.

I want to request you, in considering this case, to strike out of your minds any testimony that the court may have ruled out, and to listen to any admonition that may have been given by the court in the course of the trial.

Now, there are in this indictment three counts. The first count charges that the defendants, Ed De Bon, John Stephen Hildebrand, and Oscar Csaki, conspired among themselves that during a period between March 27, 1946 and up until the time of the conclusion of the conspiracy, somewhere after the date when the automobiles involved in this charge were delivered into the custody and ownership of De Bon, in that De Bon, who was not a veteran and who desired to purchase certain surplus property from the War Assets Administration, conspired with Hildebrand to secure a—to perpetrate a fraud on the United States by securing surplus property in a way that was not authorized under the regulations and the law, to-wit, to secure property on priorities of veterans which he was not authorized to receive.

It is our contention that Mr. De Bon entered this conspiracy on or about July 8, 1946. You will recall that at that time there was a meeting of De Bon and Hildebrand at 30 Van Ness Avenue, I believe it was, in San Francisco, at which time there was being offered for sale certain trucks, among [2] them being two Chevrolet trucks, and three White trucks. The testimony of both Mr. Hildebrand and



I believe the defendant De Bon is that he was there at that time and place. There is some slight difference as to what occurred there, but it seems that De Bon was there to get certain automobiles if possible. That is a foregone conclusion, and these two—the surplus property covered in these charges was advertised in two brochures, one Exhibit No. 11, entitled, “Veterans’ Trucks Trailers for Sale June 25, 26,” bearing clearly on its face the title “**Veterans,**” and which sale was confined exclusively to veterans, according to the testimony of the War Assets Administration officer here.

Now, this particular sale, as I stated, had been advertised for June 25 and June 26, 1946, and Mr. De Bon entered this conspiracy, I claim, on July 8, 1946.

Now, if you will recall the testimony of the War Assets Administration official, Mr. Chambers, he stated that this sale had been completed, but there were some left-over articles, among them being these two Chevrolet trucks, and that they could be purchased by veterans by making a mail order application for those trucks. Hildebrand on that same day did make a mail order request for the purchase of these two trucks, one, as he states, using the preference of the veteran, Csaki, and the other using the preference or priority of his own.

Now, both these trucks ultimately reached the hands of [3] Mr. De Bon. He got the bill of sale for them.

During—at the same time—but before I go on, I want to mention this, that some confusion has

resulted between the reference sometimes to one Chevrolet truck and at others to two Chevrolet trucks. Now, there were the two, one purchased on Hildebrand's priority and the other purchased, as we charge on Csaki's priority; and we have in this case confined ourselves to the operations between Csaki, Hildebrand, and DeBon. There may have been other conspiracies here—

Mr. Tramutolo: Just a moment. Your Honor, I object to that statement of counsel and assign it as misconduct, to say there are other conspiracies, because there is a case in point just recently that you must confine yourself to the charge in this indictment. I assign the remark as misconduct.

The Court: I instruct the jury to disregard that phase of the argument of Mr. Bonsall having to do with other alleged conspiracies than the one charged in this case.

Mr. Bonsall: What I had in mind, ladies and gentlemen, was to confine you to the facts in this case, the one Chevrolet truck and the three White trucks, and not to consider any other trucks in relation to the matter. That is what I am trying to get at.

Now, at the same time and place Hildebrand said he had a further conversation with DeBon regarding the use of priorities for the purchase of the three White trucks. Those White trucks [4] were advertised in a brochure, Government's Exhibit No. 12, "Trucks over 2¾ tons and truck tractors," being advertised by the War Assets Administration, and the dates of the sale appearing on the adver-

tisement state that these trucks were available in the following order: From June 3rd to June 17th for Federal agencies; from June 24th to July 12th, for veterans of World War II.

Now, Mr. DeBon says there were several trucks that he could use here if they could be procured.

Now, mind you, the sale of these trucks hadn't come off at the time Mr. DeBon was talking in relation to these trucks. It was a future sale, a sale to take place subsequently to July 12th, and which did actually take place on July 24th or thereabouts.

Now, Mr. Hildebrand says that they discussed these three trucks and this Chevrolet, and in the course of their discussion they consulted pamphlets similar to those which were either on the table or brought in by Mr. DeBon, and that they looked at the exact page where these trucks appeared and obtained the tag and numbers of the trucks, and put in these mail order requests for the purchase of the property, including the three White trucks.

Now, where does this conspiracy come in? All right, we have here Mr. DeBon desiring to get some Government property. He is a dealer in automobiles. He has been in the automobile [5] business up in Eureka for many years. He states that he is familiar with the way the automobile business is conducted; he is familiar with the way in which War Assets property is purchased. He said he had a tremendous credit with the War Assets Administration in the way of purchasing property, so that he was familiar with the way in which this prop-

erty could be purchased, and he therefore knew that he couldn't make the purchase of this Chevrolet truck in the time and manner in which he did, that he couldn't make the purchase of the three White trucks at the time and in the manner that he did. He must have realized that he needed some priorities in order to purchase this property, and, by the way, it seems to me that in obtaining those priorities he kind of shot the gun on other dealers, who probably didn't avail themselves of the same means of making these purchases as the defendant DeBon.

Well, they needed some priorities, and where were they to get them? Well, let's see. Along about December 11, 1945, Oscar Csaki had made an application for a Veteran's Application to Purchase Surplus Property from War Assets Administration. That is in evidence here. It is significant that he states that no property was purchased on that application, that his priorities were not used. Why wasn't it used? Hildebrand says that Csaki told him that he had **no use for the property** in subsequent applications. He didn't use the first one, not a single item. The second one, according to the testimony, [6] Csaki said, "I don't think we better make this application. I have no use for the property. I am not in business. In fact, it may get us in trouble." Both Hildebrand and Csaki testified to that in substance.

Well, along about the 23rd of March 194—the 27th of March, 1946, Hildebrand prepared a request to purchase surplus property for Csaki. Part of that application was filled in by Hildebrand, according to the testimony, and the other part by Csaki. In fact, all the essential parts were filled

in by Hildebrand, who stated just what property they wanted. Csaki signed it and took it over to the certifying officer, received his priorities, some pink slips, a pink slip for each article that authorized him to buy each article if available and he wanted it; and what does he do with those pink slips? He puts those pink slips in the possession of Hildebrand. Hildebrand had those pink slips at the time DeBon was with him there and at the time he says they consulted that catalogue on the 8th day of July, 1946.

Now, the conspiracy works this way: They need Csaki's priorities. Hildebrand said these priorities of his own had been exhausted, or he couldn't use them for some reason, and he needed priorities. They needed Mr. Hildebrand as the engineer of the scheme, and the transition is this way, from Csaki to Hildebrand, from Hildebrand to DeBon.

Now, having in mind that we start with this premise, [7] that the priorities are there, the catalogues are there, the possibility of the selection of these articles by DeBon, we conclude with this fact, that the property DeBon wanted to get into his possession after their sales, isn't it fair to assume that when he discussed this matter with Hildebrand he said, "I want this item; I want that item;" or do you suppose he left it up to Hildebrand to pick out any old item and send it to him? No, one of the significant things is that those trucks got into his possession. He didn't say, "These are not the ones I wanted," but he took them all without complaint.

Now, when he took title to these trucks, what kind of documents did he get? What kind of documents did he get? I said I would keep to the four trucks in question, so I am only going to refer to the documents on the four trucks. In each case he got a bill of sale from Csaki to himself. When he took these bills of sale, there is nothing to indicate that he made any complaint or asked how he was taking title from Csaki when he had been dealing with Hildebrand.

Now, on the occasion when he took title to the three trucks, we have these people present at that time: Csaki, Hildebrand and DeBon. DeBon was present and saw the transfer of all these papers transferring the title into his name, executed almost instantaneously, simultaneously. Now, you say, "Is there any money angle involved here?" There are so many different angles from which we can discuss this case. Is there any money angle involved here? Yes, there is, Hildebrand testifies that on the two Chevrolet trucks, only one of which I am speaking about, he received \$50, \$50 on each, and that was the agreement with DeBon, that he would be paid that money. Hildebrand testifies that when he saw DeBon on July 8, 1946, DeBon agreed to pay him \$200 for each truck that he was able to get him, each White truck.

Now, you will bear in mind that the request to purchase went in for number of trucks as might be allocated. They didn't know how many they would get, but they got three, and he was paid for those three trucks.

When was payment made? Payment was made,

of course, when the title to the trucks was placed in DeBon, the payment for the Chevrolet trucks being made, I believe, on July 9, 1946. Hildebrand testified that he received the \$50, and that he paid of that sum some \$20 or \$25 to Csaki.

The \$200 which was to be paid for each of the three White trucks by DeBon was not paid in full, according to Hildebrand's testimony. Hildebrand says that he only received \$400. That \$400 was in cash, quite a large amount of money to be represented in a cash transaction of this kind, but he says it was in cash, and was paid to him in an automobile after the title to these cars had been transferred to DeBon, or while they were in the course of transfer. It is strange indeed that the final payment for the three White trucks was represented [9] by three cashier's checks, all dated July 24, 1946, and in sequence, serial numbers 2818881—Well, it starts with 80—2818880, 2818881, and 2818882, and that following that and on the same date there is a cashier's check dated, or numbered, 2818883, the next number, for \$500, made payable to the order of the defendant Ed DeBon, and endorsed "Paid"—endorsed by DeBon and paid July 24, 1946. Why did he draw this check, this cashier's check, payable to himself, for \$500, on the same day, unless he had some particular use for that \$500? Isn't it fair to assume that this—if this was a legitimate transaction—I am now referring to the handling of the payment of this \$400 to Hildebrand—if this was a bona fide transaction, that the payment of that large amount would have been made

by a check of some kind made payable directly to Hildebrand. Here is a man engaged in business; he keeps books and records. I doubt very much if he is continually paying out \$500 in cash without getting a receipt, or paying it by check, or something.

Gentlemen, I believe this check—and DeBon says so—was used to get the \$500 or \$400 to be paid to Hildebrand that day. He went out of his way to get this check. He did not want it to appear, in other words, that he was paying this money to Mr. Hildebrand, so he had this check to account for it, and got the money himself and passed it on. It would have been just as easy to pay by check or to have received a receipt.

Now, while we are on this money subject, there seems to be [10] some discrepancy about the amount of money involved. Of the \$400 covering the purchase of the last three trucks on these priorities, according to Hildebrand and Csaki, about \$120 was paid to him, all those payments in cash, none of them by check. Now, do you suppose that Mr. DeBon paid the \$570 or \$580 that he says he did for these trucks? I don't know whether he did or not. He testifies that he paid \$580. He testifies that he paid a large sum of money; he testifies that he paid a large sum of money, whether we take it as \$580 or \$400. He testifies also, I believe, that there was a check of \$150. Hildebrand says there was no check. I doubt if there was a check, because there seems to be a studied plan to avoid any check, but he says there was a check.



I was very much interested in the testimony of Mr. DeBon on the stand. He testified that he had paid this \$580 in cash. He says he carried a large amount of cash with him and therefore he paid it in cash, but if my theory is correct, with all the money he was carrying around, he went out of his way to get a check and then used the cash for the payment; but I asked DeBon about certain statements that he made to an agent of the FBI along in February, 1947. While he was on the stand I asked him if he recognized it—recognized the agent, and he said he did. I then asked him if he hadn't made the statement to this agent that he hadn't paid anything at all to these men for these trucks, and he said, "No, I said that I paid [11] them some small amount for their expenses in going to examine these trucks, that these trucks were at Stockton and Sacramento, and I paid them not exceeding \$150 in all." At first I think he said a hundred dollars. And he said further that he thought he bought two of those trucks from Csaki and two from Hildebrand. He told the agent—I don't know whether he told the truth or not—that he met Csaki in a restaurant early in the spring of 1946, and that he met Hildebrand at a service station in the spring of 1946. Of course, I don't know whether that is true, or not.

Now, we examine the whole transaction. It shows an intent on the part of Mr. DeBon to get some property that he wasn't entitled to, using—and there must be a pre-arranged agreement between the people. Now, that agreement doesn't have to be

on the form of writing. I think his Honor will tell you you can spell out that agreement from the facts in the case, in other words, by what the people did. In other words, in this whole case I think the axiom, "Actions speak louder than words" is very applicable.

Now, the second and third counts deal with the substantive offense of fraud. The second count charges that on July 4, 1946, as far as DeBon is concerned, that he caused to be executed a request for a priority in the name of Csaki to be used for the purchase of automobiles from the War Assets Administration or the War Assets Corporation, intending all the time that he was [12] to get title to that property. That particular property was the one Chevrolet that is mentioned in the second count.

The third count charges the same facts, but relating to the three White trucks. In other words we charge that Mr. DeBon, with the intent to defraud the United States, secured or caused to be executed this request, or aided or instigated the execution of this form, requesting the purchase of these three White trucks in the name of Csaki, intending all the time that Csaki was not to be the purchaser, but himself.

I again call your attention and invite your attention to the fact that on July 8th the sale had not occurred. It was a future sale. Hildebrand didn't have the property at that time, and when title was passed, it was a simultaneous transaction.

Just in closing and passing along, I was impressed with the testimony of the Agent Dillon. It seems to me to be frank, direct, positive, time and

place, who was present, what time of day it was, just exactly as to what was said, and I was particularly impressed with the fact, with his testimony as to how the statements of Mr. DeBon changed.

Before I go on, it was significant that he wasn't anxious to make a statement at all, but the agent comes in and tells him he is making an investigation of this and he would like to see his books and records. Well, ordinarily when a business man is approached by an agency of the Government, he doesn't object if everything is all right to making any statement. [13] I think many of us have made statements at one time or another for the Government. We didn't have to make them, it is true, but when everything is all right we are usually willing to make them. But here is Mr. DeBon saying at first, "I paid nothing to these men;" then saying, "I paid their expenses"; then saying that he didn't in any event pay more than \$150, when all—when on the stand himself he testified positively that he had paid the sum of \$580 for these cars.

Now, you may regard Mr. DeBon as a truthful man. You heard what he said. You saw his demeanor. You have heard all the facts in the case.

I didn't intend to talk as long as I have, but time does pass so rapidly—you heard all the facts; you heard the scheme of operations; you are businessmen and women and of good judgment. Knowing these facts, I will leave our case in your hands as far as the opening is concerned.

[Endorsed]: No. 11841. United States Circuit Court of Appeals for the Ninth Circuit. Ed De Bon, Appellant, vs. United States of America, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed June 10, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11841

ED DE BON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION AND ORDER THAT OMITTED  
PART OF RECORD, REQUIRED BY PRAE-  
CIPE, BE ADDED TO PRINTED TRAN-  
SCRIPT OF RECORD

Whereas the stipulation and praecipe filed in the court below on Jan. 12, 1948, (R.27-28) required the inclusion in the transcript of record on appeal

herein the reporter's transcript of the prosecution's opening statement to the jury, and, whereas by inadvertence, the same was omitted from the printed record herein,

It is stipulated that the same may be printed and added to the said transcript of record on appeal.

Dated June 3, 1948.

/s/ FRANK J. HENNESSY,  
U. S. Attorney,  
Attorney for Appellee.

/s/ CHAUNCEY TRAMUTOLO,  
Attorney for Appellant.

So Ordered: June 3, 1948.

/s/ FRANCIS K. GARRECHT,  
United States Circuit Judge  
Presiding.

[Endorsed]: Filed June 3, 1948. Paul P. O'Brien,  
Clerk.

